

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CASE NO. 3:24-cv-00004**

STEPHEN ROBEY, father; DOROTHY ROBEY, mother; and J.R., a minor DOB 09/13/06,

Plaintiffs,

v.

CHARLOTTE-MECKLENBURG BOARD OF EDUCATION, Superintendent CRYSTAL L. HILL, in her professional and personal capacity; Principal TRACEY HARRILL, in her professional and personal capacity; and School Counselor ADRIAN HODGE, in her professional and personal capacity.

Defendants.

DEFENDANTS' MOTION TO DISMISS

NOW COMES Defendants, **CHARLOTTE-MECKLENBURG BOARD OF EDUCATION** (“Defendant Board”), **CRYSTAL HILL** (“Defendant Hill”), **TRACEY HARRILL** (Defendant Harrill) and **ADRIAN HODGE** (“Defendant Hodge”) through counsel, pursuant to Rules 12(b)(1) and (2) and (6) of the Federal Rules of Civil Procedure, hereby move to dismiss all claims asserted against Defendants Board, Hill, Harrill, and Hodge on the following grounds:

1. Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Plaintiffs’ Section 1983 claims (First and Second Causes of Action) should be dismissed for failure to state a claim.

2. Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Plaintiff's Third Cause of Action (State Constitutional Claim) should be dismissed against Defendant Board because Plaintiffs' Complaint does not allege any factual basis to support a state constitutional violation. First, Plaintiffs are precluded from asserting direct claims under the North Carolina Constitution because they have an adequate state remedy at law, namely intentional tort claims against the Individual Defendants in their individual capacity. Second, if Plaintiffs are allowed to assert their constitutional claims, such claims should be dismissed because: a) there is no private right of action under the North Carolina Constitution for claims asserted under the educational section; and b) common law negligence claims do not give rise to constitutional due process and equal protection violations.
3. Pursuant to Rules 12(b)(1) and (2) of the Federal Rules of Civil Procedure, Plaintiffs' Fourth, Fifth, Sixth, and Seventh Causes of Action (State Negligence and Tort Claims) against Defendants should be dismissed because the claims are barred by governmental immunity under N.C. Gen. Stat. § 115C-42. Defendant Board has not waived its governmental immunity because the Board does not have insurance which covers Plaintiffs' claims. The Defendants have submitted the Affidavit of Ms. Betty Coulter in support of this motion, filed contemporaneously herewith, as **Exhibit 1**, and incorporated by reference herein.
4. Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Plaintiff's Sixth, Seventh, and Eighth Claims (State Intentional Torts Claims) should be dismissed against

Defendant Board because Plaintiff has not alleged any factual basis for which the Board should be held liable for the alleged intentional torts of Defendants Hill, Harrill, or Hodge.

5. Pursuant to Rules 12(b)(1) and (2) of the Federal Rules of Civil Procedure, all claims against Defendants Hill, Harrill, and Hodge should be dismissed on the grounds of public official immunity.

The Defendants are filing, contemporaneously with these motions, a brief in support of the motions set out above.

WHEREFORE, Defendants **CHARLOTTE-MECKLENBURG BOARD OF EDUCATION, Crystal Hill, Tracey Harrill, and Adrian Hodge** pray this Court dismiss Plaintiffs' claims as set forth above.

Respectfully submitted this 9th day of January 2024.

/s/ Heather Bankert
Heather Bankert (N.C. Bar No. 40060)
/s/ Cody Davis
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CERTIFICATE OF SERVICE

This is to certify that on this date the undersigned filed the foregoing **DEFENDANTS'** **MOTION TO DISMISS** in the above-entitled action upon all parties to this cause by depositing a copy thereof in the United States mail, first class, postage prepaid and by electronic email, addressed as follows:

J. Elliott Field, Attorney-at-Law, PLLC
216 N. McDowell St., Ste. 100
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efieldjd@gmail.com

This the 9th day of January 2024.

/s/ Heather Bankert
Heather Bankert (N.C. Bar No. 40060)
/s/ Cody Davis
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